

HON. JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHIRLEY LACY,

NO. CV 03-2442 JLR

Plaintiff.

K. L. VILLANEUVE

Defendant

DECLARATION OF JESSE WING IN
SUPPORT OF PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO ENLARGE
TIME TO CONCLUDE DEFENDANT'S
CASE-IN-CHIEF

Hearing Date: Monday, January 30, 2006

I, Jesse Wing, state as follows:

1. I am one of the attorneys for the plaintiff in this matter, and have knowledge of the facts contained herein.

2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts of deposition of Richard Startz, Ph.D. taken October 5, 2005.

DEC OF JESSE WING IN SUPPORT OF PLTF'S
RESPONSE TO DEF'S MO TO ENLARGE TIME etc. - 1
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3. Attached hereto as Exhibit 2 is a true and correct copy of excerpts of deposition of Richard Startz, Ph.D. taken December 8, 2005.

4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts of deposition of Avery Mason Guest, Ph.D. taken September 8, 2005.

5. On July 14, 2005, plaintiff's counsel had hand-delivered to defense counsel the expert and supplemental reports of Avery Mason Guest, Ph.D., including a CD ROM containing all data and variables on which Dr. Guest based his opinions. A true copy of the Declaration of Service for these reports and data, and the Supplemental Expert Report, are attached hereto as Exhibit 4.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true to the best of my knowledge.

DATED this 25th day of January, 2006, at Seattle, Washington.

Jesse Wind

DEC OF JESSE WING IN SUPPORT OF PLTF'S
RESPONSE TO DEF'S MO TO ENLARGE TIME etc. - 2
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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2006, I electronically filed the foregoing DECLARATION OF JESSE WING IN SUPPORT OF PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO ENLARGE TIME TO CONCLUDE DEFENDANT'S CASE-IN-CHIEF with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the below listed attorneys:

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DECLARATION OF SERVICE - 3

EXHIBIT

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WESTERN DISTRICT AT SEATTLE

SHIRLEY M. LACY,)
Plaintiff,)
vs) NO. CV03-2442-P
KAREN VILLENEUVE,)
Defendant.)

10 DEPOSITION UPON ORAL EXAMINATION OF
11 RICHARD STARTZ, Ph.D.

13 1:00 o'clock p.m.

14 October 5, 2005

15 University of Washington
16 Room 101, Gerberding Hall
17 Seattle, Washington

18
19
20
21
22
23 SHERRI DEWITT, CCR #29906
24 Court Reporter

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<p style="text-align: right;">Page 30</p> <p>1 testimony.</p> <p>2 Q Have you ever consulted on another case involving race</p> <p>3 discrimination?</p> <p>4 A Yes.</p> <p>5 Q I don't know if you are including the Smith versus UW</p> <p>6 case, but I mean apart from that.</p> <p>7 A Yes, I have apart from that.</p> <p>8 Q How many?</p> <p>9 A I'm not sure. I can remember two.</p> <p>10 Q What are the general facts?</p> <p>11 A They were personnel cases. Actually, let me take that</p> <p>12 back. One of them was an age discrimination case. And</p> <p>13 there was one which was a race discrimination case, which</p> <p>14 was a personnel case where race discrimination was</p> <p>15 alleged. And I've also consulted on -- I'm sorry.</p> <p>16 Maybe if you could repeat the question.</p> <p>17 Q Have you consulted on any cases involving race</p> <p>18 discrimination?</p> <p>19 A Yes. And I also did some consulting on a case involving</p> <p>20 in a very broad sense discrimination and school</p> <p>21 assignments, racial discrimination.</p> <p>22 Q Okay. Are you talking about UW versus Smith?</p> <p>23 A No, I'm not.</p> <p>24 Q Because let's just set aside --</p> <p>25 A No, I'm talking about in addition to that.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q I apologize. Do you mean that you were only consulting</p> <p>2 because you never actually expressed an opinion that was</p> <p>3 shared with the other side of the court?</p> <p>4 A That's right, so far as I know. And I want to be clear,</p> <p>5 I've certainly consulted with attorneys and I may have</p> <p>6 written some things; I don't remember. I don't know what</p> <p>7 they did with them, but I have no reason to believe</p> <p>8 that -- I'm quite certain nothing made it as far as the</p> <p>9 court. Let me hold on for a second. Am I certain about</p> <p>10 that? I think I am certain that nothing made it as far as</p> <p>11 court.</p> <p>12 Q If in your thinking about that further you discover that</p> <p>13 there is such a thing, I would like to receive a copy of</p> <p>14 it.</p> <p>15 A I would certainly see that you do.</p> <p>16 Q Okay. What percentage of your time would you say in the</p> <p>17 average week or month is involved in providing</p> <p>18 consultation or expert opinions? And by that I mean more</p> <p>19 broadly not necessarily in litigation but to parties.</p> <p>20 A A very small fraction of my time. If I were to take a</p> <p>21 guess, and it's certainly only a guess, I would say less</p> <p>22 than ten percent.</p> <p>23 Q What were you hired to do in this case?</p> <p>24 A I was hired, well, I'll have to speak to my understanding</p> <p>25 as to why I was hired. I can't speak for the Attorney</p>
<p style="text-align: right;">Page 31</p> <p>1 Q When you say school assignments, at what level of school?</p> <p>2 A Public school.</p> <p>3 Q And for whom did you provide consulting? And I'm not</p> <p>4 actually asking the name, but the plaintiff or the</p> <p>5 defendant; and if it didn't get into court, I mean the</p> <p>6 person complaining or the person being complained against.</p> <p>7 So I'll just rephrase the question with those principals</p> <p>8 in mind.</p> <p>9 A Okay.</p> <p>10 Q For what party did you consult with the age discrimination</p> <p>11 case?</p> <p>12 A That was the defendant.</p> <p>13 Q And for what party did you consult on the race</p> <p>14 discrimination case in the personnel area?</p> <p>15 A That was the defendant.</p> <p>16 Q And for what party did you consult regarding the public</p> <p>17 school discrimination for which race you believe was one</p> <p>18 of the elements or one of the issues?</p> <p>19 A I think I want to -- let me say school assignment involved</p> <p>20 race, whether it involved discrimination might be an</p> <p>21 arguable point, I guess. And I'm pretty sure that was the</p> <p>22 defendant as well.</p> <p>23 Q And to your recollection, none of those three matters ever</p> <p>24 resulted in active litigation?</p> <p>25 A I didn't say that.</p>	<p style="text-align: right;">Page 33</p> <p>1 General's Office.</p> <p>2 Q They are not going to let me take his deposition so we are</p> <p>3 going to have to rely on you.</p> <p>4 MR. TRIESCH: You can try if you want.</p> <p>5 A In my understanding of it -- I won't speak to what their</p> <p>6 intention is, although I kind of hope we had a meeting of</p> <p>7 minds -- in the first instance to advise them on</p> <p>8 statistical and quantitative issues. And in the second</p> <p>9 instance to prepare an expert report and testify.</p> <p>10 Q Was there a point at which -- strike that.</p> <p>11 At the time that you first agreed to serve as an</p> <p>12 expert for the defendant in this case, did you already</p> <p>13 decide that you would in fact issue a rebuttal report on</p> <p>14 behalf of the defendant?</p> <p>15 A No.</p> <p>16 Q At what point did you determine -- and you are welcome to</p> <p>17 consult any of the documents that -- that you would in</p> <p>18 fact issue a rebuttal opinion?</p> <p>19 A I can't give an exact date. I received Professor Guest's</p> <p>20 report and several, I believe at the same time, a copy of</p> <p>21 one of the WSU reports and several SPSS files, which</p> <p>22 Professor Guest very courteously supplied through counsel.</p> <p>23 And so I guess it would be basically shortly, well,</p> <p>24 I'm sorry. Let me be careful. It was shortly after that</p> <p>25 that I began looking at it and trying to see which part</p>

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<p style="text-align: right;">Page 34</p> <p>1 seemed correct, which parts I thought there might be a 2 question about. And I suppose at some point, the Attorney 3 General's Office asked me formally to please prepare a 4 rebuttal, if that's the term for it, of expert report, and 5 I did.</p> <p>6 Q Do you believe that by the time you had written Report No. 7 1, which is the first Page of Exhibit 3, you had already 8 agreed to issue a rebuttal report?</p> <p>9 A I'm not sure.</p> <p>10 Q Is that anything, reviewing any document that would help 11 refresh your recollection as to when you made that 12 decision?</p> <p>13 A Well, the time sheets show that on September 4th I did a 14 first preliminary opinion. And at that point, perhaps 15 earlier, but certainly by that point, I decided it's 16 appropriate to issue a report.</p> <p>17 Q But as you sit here you can't tell whether it was after or 18 before the date that you wrote your first report to 19 Mr. Triesch that you made that decision?</p> <p>20 A That's right; I cannot tell.</p> <p>21 Q Do you recall certain a fact or set of facts or discovery 22 on your part that lead you to believe it was appropriate 23 to issue a rebuttal report?</p> <p>24 A Well --</p> <p>25 MR. TRIESCH: I just want to object to the form of</p>	<p style="text-align: right;">Page 36</p> <p>1 Professor Guest's report.</p> <p>2 Q Were you ever told that your report needed to be in the 3 form of a rebuttal and that you were not in a position to 4 simply provide an alternative viewpoint?</p> <p>5 A No.</p> <p>6 Q You've mentioned earlier that your wife is an economist, 7 and I have seen some of, on your vitae that she has 8 co-authored some journal articles with you, if that is the 9 right phrase; is that the right phrase?</p> <p>10 A It is the right phrase.</p> <p>11 Q Okay. It appeared to me that on each of the journals, 12 journal articles that dealt with the issue of race that 13 she was a co-author with you; is that correct?</p> <p>14 A I believe that that's correct; yes. Yes; I believe it's 15 correct.</p> <p>16 Q Is there an inference to be drawn from whether a person's 17 name is first or second as the author on a journal 18 article?</p> <p>19 A Yes, there is.</p> <p>20 Q What is the inference?</p> <p>21 A Alphabetical order.</p> <p>22 Q Okay.</p> <p>23 A This is -- to be helpful -- this varies in different 24 fields. In many fields, first authorship very 25 significantly means the primary author. In economics it</p>
<p style="text-align: right;">Page 35</p> <p>1 the question as counsel keeps referring to his report as a 2 "rebuttal report" and that's a term of his own making, 3 it's not what it's termed by Dr. Startz. 4 Anyway go ahead, answer it.</p> <p>5 A The process I followed was to take a look at Professor 6 Guest's work, as well as other material prepared in these 7 informal reports that we've marked as Exhibit 3 to try to 8 communicate my understanding to the Attorney General's 9 Office the decision that there should be an expert report 10 written. They at some point asked me to do so, and I was 11 perfectly prepared to do so. But if a client didn't want 12 me to testify, I suppose, I wouldn't. I don't know.</p> <p>13 Q I'm not sure if my question was stated very clearly. I'm 14 trying to figure out whether there was a fact or set of 15 facts that caused you to decide, "Aha, this deserves a 16 response by an expert, and I'm prepared to provide that 17 response"?</p> <p>18 A Well, I'm not sure that I would, except it's -- again, you 19 understand I wasn't speaking in legal terms. I wasn't 20 thinking of this purely as a response. I was thinking of 21 it as I had Professor Guest's work, some parts of which 22 are clearly exactly right. And that I was trying to state 23 my opinion as to what could be learned about the case from 24 a statistical analysis, some part of which was following 25 from the previous best work on the issue, which would be</p>	<p style="text-align: right;">Page 37</p> <p>1 sometimes means that but almost always means alphabetical 2 order.</p> <p>3 Q Can you generalize about whether you or she was the 4 primary author of the articles that were written regarding 5 race and economics?</p> <p>6 A They are truly co-authored.</p> <p>7 Q During the course of your preparation of any of the work 8 you did in this case, did you consult with your wife?</p> <p>9 A We chatted about a few things; yes.</p> <p>10 Q Did you chat with her as your wife or as a professional 11 colleague? And if we need to spend more time on it, we'll 12 do that. But there's discussion around the dinner table 13 about, "What you did today" versus "You have professional 14 expertise in this area and I'd like your input." Would 15 you agree with me there's a distinction there?</p> <p>16 A In our house that's actually a hard distinction to make.</p> <p>17 Q Okay.</p> <p>18 A But let me try to be helpful.</p> <p>19 MR. TRIESCH: Well, let me make a statement for the 20 record here, counsel. If you are drawing a distinction 21 for the legal purpose of setting up some kind of an 22 inquiry into what might otherwise be privileged as husband 23 and wife communication, I think it's inappropriate. There 24 is a privilege about discussions between spouses, and I 25 don't know that you are entitled to inquire about that,</p>

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<p style="text-align: right;">Page 50</p> <p>1 to apples, but the more you narrow the set of data, at 2 some point you won't be able, there's no chance to 3 conclude anything. So I might have done that. 4 Another possibility is whether -- I looked at a, I 5 guess it was State Patrol website, which gives some 6 general description of where these things are. And APA 5 7 seems to cover a pretty broad range. One, therefore, 8 might use District 202. One might consider whether there 9 are parts of APA, I believe it's APA 6 there are more 10 similar. Or as in this case, and as I think reflected in 11 some other parts of the report, there was a question of 12 would it make more sense to confine it to particular 13 mileage posts because those were a better definition or 14 more homogenous geographic area. 15 Q Do you think that Professor Guest's selection of APA 5 for 16 the analysis that he did was in any way invalid for the 17 reasons you've described? 18 A I don't want to use the term "invalid". I actually do 19 have some significant concern as to whether using all of 20 APA 5 is sufficiently homogenous with the set of basic 21 people who would be driving past a trooper, that it's a 22 representative sample. So that's a concern I have, but I 23 don't -- using this term "invalid" is further than I'd 24 want to go. 25 Q Did you do any statistical calculations yourself which</p>	<p style="text-align: right;">Page 52</p> <p>1 Q So as you sit here, although you have a significant 2 concern about whether the use of APA 5 was sufficiently 3 homogenous, you have not done or cannot recollect any 4 calculations that you've done that addresses that concern? 5 A I don't think that was what I testified. 6 Q Well, I understand that you have written Report No. 2 in 7 which you just testified you didn't find anything 8 noticeably different; is that correct? 9 A No. Read the whole sentence. 10 Q "The results are not noticeably different from those 11 reported by Professor Guest"?</p> <p>12 A I shouldn't say the whole sentence. I don't mean to be 13 rude. This was limited to specifically a comparison to 14 District 202. If you are asking did I, when I was 15 exploring, find any I thought terribly different for 16 District 202 from APA 5, then the answer to that is no, I 17 didn't. 18 Q Did you do any calculations in which you thought that a 19 finding, the results of your findings for APA 6 were 20 noticeably different from those reported by Professor 21 Guest for APA 5? 22 A No. I don't -- I should say I don't remember doing any 23 calculations such that I found any difference. I'm not 24 quite sure if I did such calculations, but I did not find 25 any such difference.</p>
<p style="text-align: right;">Page 51</p> <p>1 revealed a difference between APA 5 and District 202? 2 A Well, of course there are differences. But can I 3 interpret the question as to whether there were important 4 differing conclusions one would draw? 5 Q Yes. 6 A Okay. In terms of the specific comparison between APA 5 7 and District 202, there are two issues. One is what was 8 the percentage of stops. And I did not find that there 9 was an important difference between those two. 10 A second issue is would there be a difference in 11 statistical significance. And I don't have an answer for 12 that. 13 Q Because you didn't look? 14 A Because either I didn't look or I looked and I've 15 forgotten the answer. 16 Q I'm sorry? 17 A Either I did not look or I looked quickly and forgot the 18 answer and -- 19 Q Okay. 20 A But, for example, if you were to look at Report 2 here, 21 there is an analysis limited to District 202. And what it 22 says is, quoting myself, "The results are not noticeable 23 different from those reported by Professor Guest for all 24 of APA 5", but there's not a statistical significance test 25 attached there.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q Okay. Have you made plans to do any further calculations 2 that you know of at this point? 3 A I do not have any specific plans, but some may arise. 4 MR. TRIESCH: Counsel? 5 MR. WING: Do you want to take a break? 6 MR. TRIESCH: It's up to you. We're up on a hour 7 and a half, and I'm just letting the witness know he has 8 the opportunity -- at some point, I will need a personal 9 comfort break. 10 MR. WING: Sure. 11 A Either now or 15 minutes from now would be fine. Whatever 12 is good for you. 13 Q Okay. Thank you. 14 A Good for Paul, too. 15 MR. TRIESCH: Thank you. 16 BY MR. WING: 17 Q If you look at Report No. 4, which is part of Exhibit 3. 18 I believe in your report you site contact that you had 19 with WSU Professor Clayton Mosher; is that correct? 20 A That's right. 21 Q Was that by telephone, by e-mail, some other form? 22 A E-mail. 23 Q Okay. Did you learn anything else from Professor Mosher 24 besides that the coded period in the data base was 7 a.m. 25 through 7 p.m. inclusive as daylight hours?</p>

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<p style="text-align: right;">Page 58</p> <p>1 Q Okay. If I'm correct in your final report, you did 2 reference the Washington State University report in which 3 they made reference to -- 4 A Yes, I did. 5 Q Okay. Just let me finish. 6 A I'm sorry. I apologize. 7 Q That's okay. The Washington State University made 8 reference to possible errors that troopers made in racial 9 identification; is that correct? 10 A This refers to, I think it's Paragraph 9 in my report, I 11 referenced their report which was, to the best of my 12 understanding, in regard to overall trooper accuracy, not 13 by the individuals. 14 Q Okay. I'm not going to mark this as an exhibit because I 15 think this would be unnecessary use of paper, but I'm 16 going to show you the report and ask you if this looks 17 like the 2005 Washington State University report that you 18 consulted? 19 A I believe that it is. 20 Q Okay. And then I'm going to show you a particular page, 21 which has the heading Executive Summary. And there's a 22 highlighted portion there. Do you see it's Paragraph 1? 23 A I do; yes. 24 Q Would you read that out loud, please? 25 A "Our analysis of DOL" - one word - "driver photo auto data</p>	<p style="text-align: right;">Page 60</p> <p>1 particular case. So something which, from my 2 understanding of the WSU study, they did not deal with was 3 whether some troopers are better or worse or even biased 4 or unbiased, that they were, my understanding of the WSU 5 study is they were making a statement of about on average 6 did people get race, I think they say race right, although 7 in this case it just means agreement, because that was all 8 that was necessary for what they were looking at. That's 9 not all that's necessary for talking about one individual 10 versus others. 11 Q Do you believe that the database, the statewide database 12 that Professor Guest used and you used for statistical 13 calculations is invalid for the purposes that were used in 14 this case because there may have been some difficulty in 15 troopers identifying the race of those individuals they 16 stopped? 17 A The word "invalid" isn't appropriate, either yes or no. 18 No data set is perfect. It's rare for a data set to be 19 worthless; they are more or less problematic. And the 20 purpose of this was to raise the issue that there's some 21 reason to believe that there's some ways that are very 22 much relevant to this case that this database may be 23 problematic. 24 Q How would you go about determining whether it is 25 problematic for a statistical purpose?</p>
<p style="text-align: right;">Page 59</p> <p>1 indicates a high level of consistency with regard to race 2 designation made by troopers in the field and members of 3 the WSU audit team reviewing official photos and documents 4 in the DOL. Our results also indicate a high degree of 5 consistency between troopers race codes on TAR's forms and 6 on citations. In short, there is no evidence that 7 troopers are systematically miscoding race on either the 8 TAR's forms or citations." 9 Q Do you have any evidence to the contrary? 10 A No. 11 Q Okay. You did not quote that portion of the report in 12 your final report, did you? 13 A No, I did not. 14 Q Okay. Why not? 15 A It's always hard to answer a sort of prove the negative 16 type question. I didn't see a reason to quote it so I 17 didn't quote it. 18 Q Do you believe that Paragraph 9 of your report as written 19 sufficiently conveys the message of the language that you 20 just read? 21 A Well, I'm not attempting to convey the language of what I 22 just read. 23 Q What were you attempting to convey in Paragraph 9? 24 A That based on the WSU study that it's not unusual for 25 there to be disagreement over racial identification in a</p>	<p style="text-align: right;">Page 61</p> <p>1 A I don't believe you could do that from the database 2 itself. What one would -- what I hoped might be possible 3 would be to do the kind of study that the WSU people did 4 where you have several trained raters, they are sometimes 5 called, who would decide on race. And then -- but 6 comparing those to existing reports by troopers and 7 essentially discover two questions. One is are some 8 troopers simply more accurate on average than other 9 troopers in identifying race. And the other is are some 10 troopers persistently off on one side. 11 So my understanding of the WSU finding is that there 12 are at least two possibilities. One is that most or all 13 troopers guess - guess is not the right word - identify 14 the same racial percentages as these trained raters do, 15 but another could be that half are too high or half are 16 too low. And from what I was able to read, it didn't 17 speak to that question. 18 Q If other troopers -- well, strike that. 19 Can you think of a reason why in the context of this 20 data collection that the Washington State Patrol requires 21 its troopers to do, why anybody would intentionally 22 identify their stops as being African-American when they 23 were not? 24 A Well, let me qualify this by saying that I regard myself 25 as an expert on statistics and some other things, but not</p>

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1 on the field behavior of state troopers. But having said
 2 that, I think you asked why somebody would intentionally
 3 overidentify African-Americans. And I don't see why
 4 someone was particularly likely to do that.
 5 Q Okay. So if other troopers besides Karen Villeneuve would
 6 not overidentify, your theory is that they might
 7 underidentify and, therefore, she would stick out; is that
 8 how this would be relevant?
 9 A Well, I want to be careful. There's the issue of
 10 intentional --
 11 Q Uh-huh.
 12 A -- or not. One of the examples which is a concern is that
 13 racial identification is actually quite hard. In fact, in
 14 some sense it's not scientifically meaningful, but
 15 culturally we use it anyhow. So the issue is if somebody
 16 has dark skin, but is not very dark, I think it's quite
 17 possible that some people decide to err on the side of
 18 identifying them as white or would be unsure. And that in
 19 fact, and I want to be clear that this is a question, this
 20 is not, this is unfortunately not something that I think
 21 that we have evidence on. You might find, for example,
 22 that African-American troopers identify more
 23 African-Americans because they are less embarrassed -
 24 embarrassed may not even be the right word - they just
 25 don't worry about making such an identification. And that

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1 A No, I would not suspect that.
 2 Q Why is that?
 3 A Well, I'll give you an historical example. In the, I
 4 believe it was post Civil War South census records race --
 5 the story is actually a little disgusting. They used to
 6 send census takers out with paddles with different colors
 7 on them that they could surreptitiously hold and look at
 8 the person because you couldn't ask somebody if they were
 9 white or black because you might get shot.
 10 And this is for many people, not for all, for many
 11 people this is a very sensitive subject and I wouldn't be
 12 at all surprised if they erred persistently in one
 13 direction or another or in different circumstances for a
 14 wide variety of factors. I mean, we know from the WSU
 15 study that they are sort of trained experts in sort of an
 16 easy, emotionally easy set up as possible. They weren't
 17 involved with the people there, not infrequently disagreed
 18 with each other. And one would expect they probably did a
 19 better job -- I should be careful. They may not have done
 20 a better job than the trooper on the street. And maybe on
 21 the other hand, the trooper, because they meet people all
 22 of the time, they turn out to be better. I just don't
 23 know.
 24 So I want to be clear that I'm not saying that I know
 25 for a fact that there is a bias one way or the other, but

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1 might have something to do with Trooper Villeneuve. I
 2 think everybody brings their own background to this kind
 3 of identification and it's not necessarily either
 4 scientific background, it's how they grew up and stuff
 5 like that. So, there might well be a variety of behavior
 6 about accuracy and it would be scientifically very
 7 interesting to know about, but there doesn't seem to be
 8 much evidence.
 9 Q Well, apart from intentional misidentifying individuals
 10 based on their race, wouldn't you expect any errors to be
 11 random?
 12 A No.
 13 Q Why not?
 14 A Because people's identification of people by race can be
 15 entirely honestly intended and errors can be
 16 unintentional, but their life experiences might very well
 17 affect their identification.
 18 Q I'm probably not asking my question in a way -- I'm not
 19 doing a good job of it. But if you have several hundred
 20 troopers, wouldn't you expect those individual troopers
 21 who may not be as accurate in their identifying
 22 individuals based on race to be randomly distributed such
 23 that every statistical calculation is going to include
 24 some errors, but not in a way that would change the
 25 validity of any particular calculation?

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1 this is one of those areas in which there is reason to be
 2 concerned of possible biases.
 3 Q I'm going to try one more time. I think I understand your
 4 point. And the point I'm concerned with is wouldn't you
 5 expect that those biases would be manifested in such a way
 6 that they may be overidentifying or underidentifying, and
 7 that unless you could show some sort of systematic over-
 8 or underidentification, these errors would wash out?
 9 A No, I would not expect them to wash out. They might, but
 10 I don't think there's any reason or priority to think they
 11 would wash out.
 12 Q So you believe there's a concern that there may be some
 13 biases; is that correct?
 14 A There may -- I have a concern -- I'm not even sure I want
 15 to accept the use of the term "bias". I think that I have
 16 a concern that there are different levels of accuracy of
 17 racial identification by different troopers.
 18 Q Uh-huh.
 19 A And I have a concern that in different situations or among
 20 different troopers, there may be persistence one way or
 21 persistence the other way. I don't know. But because
 22 it's a particularly sensitive subject in our culture, I
 23 worry significantly about the accuracy.
 24 MR. WING: Okay. Why don't we take a break. Thank
 25 you for staying with that.

17 (Pages 62 to 65)

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<p style="text-align: right;">Page 66</p> <p>1 (Off the record discussion.) 2 (Recess in proceedings.) 3 BY MR. WING: 4 Q Looking at your Report No. 4. 5 A Yes. 6 Q You wrote on Page 2, "The results reported here differ 7 somewhat from those found by Professor Guest." 8 A I'm sorry. Let me catch up with you first. 9 Q I'm sorry. 10 A Yes. 11 Q In what way? And let me just say, I've got a copy of his 12 report; would that help you? 13 A It might in a bit, but I think for the moment, I think 14 what I was referring to is that the numbers I computed 15 were not exactly the same as the ones Professor Guest 16 computed. 17 Q Okay. You then said, "Trooper Villeneuve shows little 18 differences in stops by race by day versus night." What 19 were those differences? 20 A That -- I've got this right. That a fraction of Trooper 21 Villeneuve's stops, the fraction of the stops who were 22 African-Americans were 12.6 at night, according to my 23 calculation, versus 13.0 during the day. 24 Q And what did you find with regard to other troopers? 25 A That they were 9.3 percent at night and 6.9 percent during</p>	<p style="text-align: right;">Page 68</p> <p>1 A I think I'll stand by what I say, which is that Trooper 2 Villeneuve stops approximately the same percentage, just 3 slightly higher percentage during the day, and -- yes, I 4 said that right -- and that other troopers stop a higher 5 percentage at night. 6 Q Do you find any significance with the fact that she stops 7 the, same in your view, at night as she does in the day? 8 A Yes, possibly. One of the suggestions in the WSU report 9 was that it's hard to, harder to identify race at night 10 when you are making a traffic stop. So that if you were 11 intentionally -- again I shouldn't really use the word 12 intentionally. If you were, well, maybe intentionally is 13 okay here -- trying to stop more African-Americans, you 14 would expect to see some kind of noticeable difference 15 between the day and night behavior. And there really 16 isn't a noticeable difference here for Trooper Villeneuve. 17 Q But you'd agree there is a difference for the other 18 troopers and it goes counter to that whole logic; they are 19 stopping more African-Americans at night when presumably 20 it would be harder to see them? Is that right? 21 A They are stopping more at night where it's presumably 22 harder to see them. 23 Q What sort of inference do you draw from that? 24 A There are two possibilities which could explain that. One 25 possibility is that there are, where these other troopers</p>
<p style="text-align: right;">Page 67</p> <p>1 the day. 2 Q So, Trooper Villeneuve stops a higher percentage of 3 African-Americans during the day than she does at night 4 according to your calculation; is that right? 5 A A very small higher percentage; yes. 6 Q And the other troopers -- now, is this for the state or in 7 APA 5? 8 A Well, one might hope for better documentation, but I 9 believe that this is in APA 5. 10 Q Okay. The other troopers in you believe APA 5 stop more 11 African-Americans at night than they do during the day? 12 A That's correct. 13 Q Which is the opposite of what Trooper Villeneuve does? 14 A Well, they stop more and Trooper Villeneuve's is 15 effectively equal at day or night. It's not exactly, but 16 it's quite close. 17 Q Well, are you assigning an error ratio that's like .4? I 18 understand you are saying they are close, but they are not 19 the same. Are you assigning an error rate of .4 percent? 20 A I am saying they are close, but they are not the same. 21 Q So, am I correct in saying that Trooper Villeneuve has the 22 opposite behavior of the remaining troopers in that she 23 stops more African-Americans during the day than at night, 24 whereas most other troopers stop more African-Americans 25 during the night and less in the day?</p>	<p style="text-align: right;">Page 69</p> <p>1 are, a different percentage of drivers of different races 2 in day versus night. That's a possibility. 3 The other is that they are afraid that somebody is 4 going to give them some kind of frivolous suit and so that 5 they are intentionally, when they can tell the difference, 6 not stopping African-Americans. Those are both 7 speculations only. 8 Q Is it possible that somebody would bring some kind of 9 nonfrivolous suit that they'd be afraid of, or is it just 10 frivolous suits? 11 A Oh, I -- well, if we're asking about the question of them 12 doing it, I suppose if somebody were intentionally, 13 racially biased in doing this, I guess they could be 14 trying to hide their behavior, although that calls for 15 them being pretty clever. So, I guess there's certainly a 16 possibility there could be nonfrivolous suits as well. 17 Q And how did the behavior of Trooper Villeneuve's stops of 18 Caucasians vary between night and day? 19 A Let's see. She stopped during the night, 59.9 percent of 20 her stops were Caucasian, and -- I'm sorry did I say that 21 right? At night. And during the day they were 64.7. 22 Q Can you draw any inference from that fact? 23 A Well, let me say I don't know whether those are, whether 24 that's a big enough gap to be statistically significant, 25 although it may be; I actually just don't know.</p>

18 (Pages 66 to 69)

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<p style="text-align: right;">Page 86</p> <p>1 which those are.</p> <p>2 Q Okay. Do you draw a conclusion that it is less likely</p> <p>3 that an African-American trooper would discriminate on the</p> <p>4 basis of race against an African-American driver than a</p> <p>5 Caucasian trooper would?</p> <p>6 A You can't draw that conclusion from this data --</p> <p>7 Q Okay.</p> <p>8 A -- either way.</p> <p>9 Q So why would you consider as one of the three possible</p> <p>10 explanations that African-American troopers -- why it</p> <p>11 matters that there are African-American troopers who stop</p> <p>12 African-American drivers at a higher rate than Caucasian</p> <p>13 troopers do?</p> <p>14 A Are you asking why it matters to the issue of Trooper</p> <p>15 Villeneuve?</p> <p>16 Q Yes.</p> <p>17 A Oh.</p> <p>18 Q Isn't your assumption that they are less likely to do</p> <p>19 that?</p> <p>20 A The issue is that I think most people would feel, and I</p> <p>21 would probably share the assumption, that probably</p> <p>22 African-American drivers (sic) are not likely to be in a</p> <p>23 discriminating way targeting African-American drivers.</p> <p>24 Q I think you said drivers twice.</p> <p>25 A That African-American troopers are less likely to -- no, I</p>	<p style="text-align: right;">Page 88</p> <p>1 A Not that I can bring to mind at the moment.</p> <p>2 Q The papers that I've looked at -- strike that.</p> <p>3 How many papers, published papers that you've written</p> <p>4 or identified in your vitae do you believe relate to</p> <p>5 issues of race? I counted three; does that sound right to</p> <p>6 you?</p> <p>7 A I'll have to take a look at it.</p> <p>8 Q That's fine.</p> <p>9 A To do that I have to find my vitae.</p> <p>10 Q It's attached --</p> <p>11 A It's not attached to this exhibit.</p> <p>12 Q That's fine. Just a minute, I'll get you a copy.</p> <p>13 A If you have a copy, then maybe if it would help I could</p> <p>14 just identify which ones.</p> <p>15 Q That would be great.</p> <p>16 A Thank you.</p> <p>17 MR. TRIESCH: Do you want to make it an exhibit or</p> <p>18 not?</p> <p>19 MR. WING: Yeah, let's make it an exhibit.</p> <p>20 (Exhibit No. 5 marked for identification.)</p> <p>21 A The paper "Inequality and Race: Models and Policy" deals</p> <p>22 with race.</p> <p>23 Q Can you say what page you are on?</p> <p>24 A I'm sorry. I'm on Page 17. The --</p> <p>25 Q I'm sorry. With your wife; is that correct?</p>
<p style="text-align: right;">Page 87</p> <p>1 better not say "less".</p> <p>2 Well, probably most of us, including me, would be</p> <p>3 surprised to find that African-American troopers are</p> <p>4 especially hard on African-American drivers. It is</p> <p>5 certainly a possibility, but I think it would be</p> <p>6 relatively surprising. But the point of this comparison</p> <p>7 is that the report that Dr. Guest did follows a</p> <p>8 statistical method and then it seemed to me that this was</p> <p>9 being, well, I think the word "designed" was used</p> <p>10 somewhere. So it was suggested that this was evidence</p> <p>11 that Trooper Villeneuve was, my word, prejudiced, not his</p> <p>12 word. And what I was trying to say is, well, if you</p> <p>13 follow the same procedure and you follow the same logic,</p> <p>14 you would appear to have to say that African-American</p> <p>15 troopers, not a particular one, but on average are</p> <p>16 prejudiced against African-Americans. And that's not</p> <p>17 impossible, but it doesn't seem likely.</p> <p>18 Q And is that a common sense conclusion?</p> <p>19 A I think that was intended as a common sense conclusion;</p> <p>20 yes.</p> <p>21 Q Do you have any studies that you can point to,</p> <p>22 sociological or other studies, that support your</p> <p>23 conclusion?</p> <p>24 A No.</p> <p>25 Q Have you read any such studies?</p>	<p style="text-align: right;">Page 89</p> <p>1 A Yes, it was.</p> <p>2 "On the Persistence of Racial Inequality", also</p> <p>3 written with my wife, deals with race. "Private</p> <p>4 Discrimination and Social Intervention in Competitive</p> <p>5 Labor Markets", written with my wife, deals with race.</p> <p>6 That's on Page 18.</p> <p>7 Q Thank you.</p> <p>8 A "Race", this is on Page 20, "Race, Information, and</p> <p>9 Segregation", written with my wife, also deals with race.</p> <p>10 Q That's under the head "Working Papers"?</p> <p>11 A Yes.</p> <p>12 Q What does that refer to?</p> <p>13 A It's a paper that we've written that is not yet published.</p> <p>14 I have my fingers crossed, however.</p> <p>15 We are on Page 22, I think this is responsive, but you</p> <p>16 can ignore it I guess if it's not. The thing marked,</p> <p>17 "Brown v. Board didn't fix everything", this is an op-ed</p> <p>18 piece.</p> <p>19 Q In the newspaper?</p> <p>20 A In the newspaper, yeah, which is based on race.</p> <p>21 On Page 23, there is another op-ed piece, "How Seattle</p> <p>22 can move on schools and race."</p> <p>23 Q Thank you.</p> <p>24 A Sure.</p> <p>25 Q These papers seem to be reviews of previous literature and</p>

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<p style="text-align: right;">Page 118</p> <p>1 A This was again one of these research issues of how many 2 different things could you consider. There's always an 3 infinite set.</p> <p>4 Q Well, without controlling for the geographic location, 5 what can you really conclude?</p> <p>6 A That on average African-American officers stopped twice 7 the proportion of African-Americans than white officers 8 do.</p> <p>9 Q Well, it might simply be they work in areas where there's 10 a larger number of African-Americans driving by; is that 11 correct?</p> <p>12 A Exactly, I think you got the point just right. In this 13 case, as in the case with the test on Trooper Villeneuve, 14 there are other variables that might turn out to be the 15 explanation. And some of these have been tested in some 16 places and others haven't. And some we don't have the 17 data to test, but so that basically, yeah, it's the same 18 situation.</p> <p>19 Q Okay. Paragraph 15 of your report --</p> <p>20 A Yes.</p> <p>21 Q -- you find that African-American troopers compared to 22 Caucasian troopers in APA 5 stop a slightly higher 23 percentage of African-Americans, around 8.7 to 8.0 24 percent?</p> <p>25 A 8.7 to 8.0; correct.</p>	<p style="text-align: right;">Page 120</p> <p>1 stopped.</p> <p>2 Q Well, let that's not my question.</p> <p>3 A I'm sorry.</p> <p>4 MR. WING: Do you want to read back my question? 5 (The last question was read back.)</p> <p>6 A Well, I'm trying to -- I'm pausing because I'm trying to 7 figure out if there is a way from looking at this to 8 answer that perfectly reasonable question. Because the 9 test, the explicit test that was done is certainly, as is 10 my understanding of Professor Guest asking about all of 11 the races, not just white versus African-American.</p> <p>12 So the thing which I'm trying to figure out in my own 13 mind is if you can actually answer that question because 14 of the ordering of the percentages of other race. But 15 since we don't want to sit here while I spend the next 16 hour trying to figure this out in my head, if it's a 17 satisfactory answer, the test I did did not distinguish 18 whether it was all three races or just the two.</p> <p>19 Q Okay. So is it correct to say you can't tell which of the 20 comparisons produces the statistically significant 21 chi-square from your Paragraph 15?</p> <p>22 A It is correct to say that from -- well, my Paragraph 15 23 reports a test that does not distinguish which of them it 24 is. I'm not sure whether simply from looking at the 25 information on the table one could nonetheless figure out</p>
<p style="text-align: right;">Page 119</p> <p>1 Q You then perform a chi-square test on a table that also 2 includes stops of, quote, "other races" besides whites and 3 African-Americans, and you find that the patterns in the 4 table are statistically significant; is that right?</p> <p>5 A That's right.</p> <p>6 Q Since this table involves three groups, how do you know 7 which of the comparisons is producing the statistically 8 significant chi-square?</p> <p>9 A Is it okay if I look at Dr. Guest's report?</p> <p>10 Q Anything you want.</p> <p>11 A Thank you.</p> <p>12 Q Except my notes.</p> <p>13 A That's quite fair. What I was doing here was trying where 14 possible, where reasonable to follow the same pattern that 15 Professor Guest had used. And I guess his paragraph, I 16 guess it's Paragraph B of his report it's labeled, Page 17 14, where he did a comparison of other officers versus 18 Trooper Villeneuve on, those are the two different rows; I 19 did African-Americans versus Caucasians, two different 20 rows. He then had the columns white, African-American and 21 and other race. And because he did that, I included those 22 same races. And I think, unless I screwed something up, 23 that I basically did the exact same test that he 24 described, which is checking whether there's independence 25 between who did the stops and between the race that was</p>	<p style="text-align: right;">Page 121</p> <p>1 what would happen if you did confine it to all three 2 races, that wasn't what was done. And I'm just not 3 sure -- you ask could one figure, and I don't know the 4 answer as to whether one could or not.</p> <p>5 Q Okay. Paragraph 15, let's see, you conclude --</p> <p>6 MR. TRIESCH: Are you referring to Exhibit 1?</p> <p>7 Q In your report, so I guess that's Exhibit 1.</p> <p>8 A Uh-huh.</p> <p>9 Q You wrote, "If one were to interpret the statistical 10 evidence as indication that Trooper Villeneuve stops a 11 greater proportion of African-Americans 'by design', it 12 would appear one would have to reach same conclusion with 13 regard to the 'design' of African-American troopers"; 14 right?</p> <p>15 A That's what I wrote.</p> <p>16 Q Okay. If your presentation of the data in Paragraph 15 17 does not answer the question of which comparison produces 18 the statistically significant chi-square, how can you 19 reach that conclusion?</p> <p>20 A Well, if I understand -- and I'm really not trying to be 21 rude here -- if I understand the argument you are making, 22 you are saying that the analysis that I did in this 23 paragraph and that the analysis that Professor Guest did 24 in Paragraph B, C, D, E, possibly just those, I'm not 25 going to, we don't need me to keep going through this, but</p>

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<p style="text-align: right;">Page 122</p> <p>1 there are some others. If you are saying they are all 2 inappropriate or irrelevant, I guess you could make that 3 argument. But let me -- 4 Q That's not my question. 5 A Well, okay. Let me continue and I'll try to answer. 6 What is said here and what would be more accurate is 7 if it were to say if one were to interpret the statistical 8 evidence to indicate that Trooper Villeneuve's 9 differential stopping rates by race were by design it 10 would appear one would have to reach the same conclusion 11 with regard to the design of African-American troopers. 12 So, a good point actually, that if you want to label 13 it only African-American, you shouldn't have three races; 14 yeah, I guess that's three races in there. And so that 15 that would be more accurate if it said by race rather than 16 specifically African-Americans. And that's, from my 17 understanding, what Pete did, but, of course, that would 18 apply to his as well. And it would -- if Pete and I were 19 off doing a scientific thing together, we would then 20 probably go back and say, okay, let's go do all these sort 21 of differently, just having the two categories. It's a 22 good scientific point. 23 Q In your Paragraph 15, you note the percentage difference 24 between 8.7 percent to 8.0 percent. What is the 25 difference?</p>	<p style="text-align: right;">Page 124</p> <p>1 statement with regard to the statistical significance. 2 Q Okay. Would you agree that the substantive or importance 3 of the difference between the 8.7 percent to the 8.0 4 percent is quite less than 7.9 percent to 12.7 percent 5 noted in Professor Guest's report. 6 A I agree they are different. 7 Q And how would you characterize the nature or extent of the 8 difference? 9 A There is more of a difference between Trooper Villeneuve's 10 stops in this statistic we're looking at, and the average 11 trooper stop than there is in the difference of 12 African-American trooper average versus Caucasian trooper 13 average. 14 Q And I understand you say there's more. What adjective 15 would be place in front of the word "more" to describe 16 whether it was trivial, significant, substantial, 17 dramatic? You pick your own. 18 A I think if had I wanted to pick an adjective, I probably 19 would have. I think that -- let me tell you why I'm 20 hesitating a little bit. There is a difference between 21 the two comparisons, which is in the work that Professor 22 Guest did were comparing individual compared to an 23 average. 24 In the work that I did, I'm comparing two averages. 25 Now, on average an individual has the average behavior.</p>
<p style="text-align: right;">Page 123</p> <p>1 A You are referring to what's in the table? 2 Q Yeah. 3 A Okay. Because the table appears on Page 8. 4 Q Yeah. 5 A Yes. 6 Q And what is the percentage difference that Dr. Guest 7 notes? 8 A If I understand the reference you are asking for is the 9 12.7 versus the 7.9? 10 Q Okay. 11 A Yeah. 12 Q And you, as I understand it, are comparing in your report, 13 Paragraph 15, that one would have to reach the same 14 conclusion with regard to the 8.0 to 8.7 percent 15 differential as Dr. Guest reaches when comparing 12.7 16 percent and 7.9 percent. Is that not somewhat of an 17 exaggeration? There is quite a difference between those 18 comparisons, isn't there? 19 A Well, what I said was, that I was quoting Professor Guest, 20 quote, "The likelihood this distribution is by chance is 21 remote; it is less than one out of one-thousand, which is 22 highly statistically significant." 23 If one were to interpret the statistical evidence, and 24 I certainly mentioned statistical significance here, then 25 one would reach the same conclusion. So this was a</p>	<p style="text-align: right;">Page 125</p> <p>1 But when you are looking at individuals, you expect to see 2 more dispersed, or I should say, greater variation in 3 outcomes than when you are looking at averages because 4 exactly what averages do is they tend to lop off the 5 difference. 6 So if you were to give me two different groups with a 7 moderate number of people, one case what was roughly 8 8 percent, 8.7 percent, and the other case was roughly 8 9 versus 12 something. And I'd say that's enough to 10 certainly be noticeable. One would certainly want to pay 11 attention to that. When one of the comparisons is only an 12 individual then -- I know I use the word "important". The 13 whole topic is clearly important; maybe large or 14 substantively large would be better -- but it's less of a 15 difference in that context. It is still, I want to be 16 very clear, I think that looking at that number one wants 17 to look and say, Well, they are different; why? 18 Does that get you an answer? I think it's the best I 19 can do. 20 Q I think you said in your final report that there could be 21 data that would extend the data set that you might look 22 at. This is Paragraph 6. What did you mean by that? 23 A I know that there exists data for other time periods than 24 was covered in this, and so one could possibly look at 25 that.</p>

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1 rule it out. We're talking about getting more or less
 2 weight of the evidence rather than ruling things out.
 3 That would certainly be one thing that one could do.

4 The other thing is that -- well, I don't know if I
 5 should be embarrassed, but you don't know what the date of
 6 the suit was or when anybody found out anything.

7 Q Sure.

8 A And so I might have some data, and what's more, I assume
 9 that somebody actually in fairness can know a suit is
 10 coming before it comes. I just don't know exactly how the
 11 details work. You might get some more data that people
 12 would reasonably agree was not tainted. You might get
 13 other data where people would quite fairly be more
 14 concerned about whether it may have been tainted.

15 Q Okay. You address in Paragraph 16 the issue, of your
 16 report, of the daylight versus nighttime stops?

17 A Yes, I did.

18 Q Okay. Do you remember that issue?

19 A Yes.

20 Q Okay. Did you make some assumptions that when accepting
 21 the WSU designation of 7 a.m. to 7 p.m. and 7 p.m. to 7
 22 a.m. that that time frame was a reasonable basis for
 23 distinguishing between when a trooper could reasonably see
 24 the driver?

25 A What I did, which is sort of standard scientific practice,

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1 Q And would you also agree that there did not appear to be
 2 any specific data in the WSU report that explained why
 3 they believed on well lit highways a trooper would be
 4 unable to see the race of a driver?

5 A You know, I am not sure, I may be agreeing. I'm not sure,
 6 I don't remember them saying anything about "unable to
 7 see". I think that they were trying to, that their
 8 suggestion was that there would be an important, in some
 9 sense, substantive difference in how often you could see.
 10 But having said that, I mean, that's a factual question as
 11 to what they said in the survey, in their study, but I
 12 don't remember them saying why they picked those times.

13 Q Well, apart from what you may have read in the WSU report,
 14 do you have any separate data or studies that you rely
 15 upon in concluding that it would be more likely the
 16 troopers would be able to identify race at night and
 17 during the daytime?

18 A Other than Professor Guest had sort of looked at the same
 19 question, no, I don't have any independent --

20 MR. TRIESCH: Give me a minute?

21 MR. WING: Sure.

22 (Off the record discussion.)

23 BY MR. WING:

24 Q Do you believe that at least some troopers in the State of
 25 Washington make race-based decisions on who to stop?

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1 is if there's an existing literature, you try to change as
 2 few factors as you can manage. And so was, I'm not sure
 3 I'd want to accept the words making a judgment that it was
 4 reasonable; it was simply saying these people seemed to
 5 know what they were doing. Unless I've got a good reason
 6 to the contrary, I'll just continue on with what they had
 7 done. And I guess my impression, and I'm sure I'll be
 8 corrected at some point if I'm wrong here, is that when
 9 Professor Guest did it, I thought that he was following,
 10 basically trying to follow that model as well. So -- and
 11 I guess I should have a more firm answer, but I'll find
 12 out if I'm saying it wrong.

13 Q Well, for example, you would agree, wouldn't you, that for
 14 at least part of the year it's quite possible to see
 15 people driving in their cars past 7:00 at night?

16 A Yes, I would.

17 Q Would you also agree that it's certainly possible during
 18 maybe even significant portions of the year not to be able
 19 to see people when they are driving their car at 8:00 in
 20 the morning?

21 A I'm trying to remember since I get up earlier than that
 22 what time do my eyes open. But if it would help, I am
 23 happy to agree that using seven a.m. and seven p.m. as
 24 arbitrary cutoff days introduce some error into when
 25 people can be seen.

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1 MR. TRIESCH: Objection; calls for speculation.
 2 A I don't have the slightest knowledge about whether
 3 troopers in the State of Washington, individual troopers
 4 make race-based stops, but I am completely happy to say
 5 that given there are a large number of them, I would be
 6 surprised as hell if there wasn't somebody who was acting
 7 out of prejudice.

8 Q Okay. To determine whether a particular trooper was
 9 engaged in such behavior, would you go through a different
 10 analysis than Dr. Guest did?

11 A Yes.

12 Q What would you do?

13 A Well, I would actually say I might very well begin with
 14 exactly what Dr. Guest did. One of the things that
 15 statistical analysis can be very useful for is to give you
 16 a quick and inexpensive screen.

17 I would then, however, want to do two other things.
 18 The first is the one we sort of talked about a number of
 19 times which asks can we, is there an explanation in the
 20 statistics or otherwise which would -- I'm sorry.

21 Assuming we identify a trooper, ten troopers or whatever
 22 who have a higher than average number of stops by race or
 23 gender or whatever. I'd want to ask if there's some
 24 covariant that actually explains that.

25 The second thing I would want to do is I would then

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1 say, okay -- suppose you did not find that after you
 2 conducted a thorough investigation. I would say, okay,
 3 there is a reason to be, to have some suspicion as to what
 4 is going on here. And that the point I think I would try
 5 to look for evidence other than statistical evidence. I
 6 would be very -- given that we can't do a perfect job of
 7 explaining all of these covariates, I think that it is
 8 sensible to use these things to raise questions, to call
 9 for further investigation. I would be very hesitant in
 10 looking at individual troopers to make any kind of final
 11 conclusion.

12 If we were looking at large groups of troopers where
 13 there was more clear reason to believe that unobserved
 14 covariates were unlikely to differ on average, I might go
 15 further. So I think there's some difference, and there's
 16 always a judgment call involved in how much weight you
 17 want to put on statistical evidence in cases involving
 18 groups versus trying to identify an individual.

19 Q Do you believe that Dr. Guest's report raises a concern in
 20 your mind that Trooper Villeneuve may be making stops
 21 based on the race of individual drivers?

22 A Very much saying does it raise a concern? Yes.

23 Q Do you believe that that concern has been resolved by the
 24 data presented in your report?

25 A No.

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1 answers for; can we think about how they would affect the
 2 analysis.

3 When you are looking at comparing groups, not in every
 4 case, but in general you have a better shot at being able
 5 to reasonably believe that the unobserved covariates are
 6 likely to wash out across two groups. You have a better
 7 shot there than you do of a group versus one individual.
 8 So those are the, I think, the two main reasons.

9 Q Okay. Why don't I just go through and do this hopefully
 10 as rapidly as we can?

11 A My baby took herself home, so I'm okay.

12 Q If you'd please turn to Professor Guest's report.

13 A This is Exhibit --

14 Q Exhibit 6?

15 A -- Exhibit 6; yes.

16 MR. TRIESCH: Now, I don't know --

17 MR. WING: Didn't I give you a copy?

18 MR. TRIESCH: I don't believe so.

19 MR. WING: Oh, you know what, here you go.

20 BY MR. WING:

21 Q Section A?

22 A Do you know what page number?

23 Q 7.

24 A Thank you. Yes.

25 Q Do you believe that all of your criticisms, if any,

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1 Q I asked you whether you thought there may be stops by
 2 troopers based on race in this state, and you said you
 3 thought, in part, you'd have to treat the analysis of it,
 4 uncovering behavior of an individual versus a group. And
 5 I may have missed it in what you said, but what's the
 6 difference in how you would treat them?

7 A I would put much more weight on purely statistical
 8 evidence which compared groups rather than an individual
 9 to a group. Is that responsive or not?

10 Q Well, I think so. If you said it, I apologize, but I
 11 don't understand why.

12 A Oh, okay. And I'm not sure whether I -- I don't know if I
 13 said it before. Let my try to say it now. There are two
 14 separate statistical issues. One is that because
 15 averages - oh, this is going to sound dumb - because they
 16 are in the middle, they are much less likely to randomly
 17 be -- two different averages are much less likely to be
 18 randomly far apart than an average and an individual
 19 observation. So that's one of the reasons.

20 The other, which I think is more important and
 21 certainly probably more relevant I think in this case, is
 22 that there is in any statistical analysis, the issue of
 23 what we would call the unobserved covariates, where what a
 24 scientist, statistician does is say, well, what are the
 25 factors that are left out that we don't have numerical

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1 regarding Section A are contained in your final report?

2 And let me put this another way.

3 A Yes.

4 Q You can see, I'd like to go through these section by
 5 section.

6 A Sure.

7 Q And I don't have a need to have you repeat everything that
 8 we've said earlier today.

9 A That's fine.

10 Q Okay. But my point is I'd like to hear any criticisms
 11 that you have. And you can say, "We're discussed this
 12 earlier today" or "it's in report number" whatever.

13 A That's fine.

14 Q Okay.

15 A In regard to -- I want to make sure everything he said in
 16 Paragraph A.

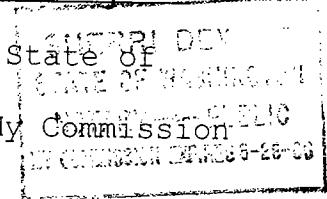
17 Q Sure.

18 A I don't understand why Professor Guest picked the numbers
 19 500 and 100. There's nothing necessarily wrong with those
 20 numbers. I would sort of -- I'm partially frankly just
 21 curious if there is some particular reason. My
 22 speculation would be is they are nice round numbers, but I
 23 don't know that. I would like to know that. But the
 24 basic, just what he says in A, other than what I've said
 25 in other places or whatever, I don't have anything

1 C E R T I F I C A T E

2 STATE OF WASHINGTON)

3 COUNTY OF KING)

4 I, SHERRI DEWITT, Notary Public in and for the
5 State of Washington do hereby certify;6 The foregoing deposition was taken before me at the
7 time and place set forth;8 The witness was by me first duly sworn to testify the
9 truth; and the testimony of the witness and all objections
10 made at the time of the examination were recorded
11 stenographically by me, and thereafter transcribed by
12 myself;13 The foregoing transcript is a true record of the
14 testimony of the witness and of all objections made at the
15 time of the examination, to the best of my ability. I
16 further certify that I am in no way related to the parties
17 or counsel in the action, nor do I have an interest in the
18 matter;19 WITNESS my hand and Seal this 10th day of October,
20 2005.21 
22 NOTARY PUBLIC in and for the State of SHERRI DEWITT
23 Washington, at North Bend. My Commission # 00000000000000000000
24 expires 5/26/06.25
16
SHERRI DEWITT, CCR
1310 Forster Blvd. SW, North Bend, WA 98045
(206) 617-3415

C O R R E C T I O N S

Please make all corrections, changes, or clarifications to your testimony on this sheet, showing page and line number and the nature of the change. If there are no changes, write "None" across the page. Sign this sheet and the declaration of signature page, and return the signed corrections and declaration of signature within 30 days to SHERRI DEWITT at the address below for filing with the clerk of the court.

PAGE	LINE	CORRECTION AND REASON
24	23	staple - spelling
40	6	past - spelling
65	10	a priori [act "or priority"]
100	11	car - not care
135	13	me - not my

RICHARD STARTZ, Ph.D.

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DECLARATION OF SIGNATURE

3 STATE OF WASHINGTON)

4 COUNTY OF)

6 I have read the foregoing transcript, and declare
7 under penalty of perjury that the same is true and
8 accurate, save and except for any changes and/or
9 corrections, if any, as indicated by me on the
0 "Corrections" sheet hereof

RICHARD STARTZ, Ph.D., The Witness

EXECUTED AT Seattle, Washington, this 17,
day of October, 2005.

State of Washington, County of King

I certify that I know or have satisfactory evidence that
Richard Szczerby is the person who appeared before me,
and said person acknowledged that he/she signed this instrument and
acknowledged it to be his/her free and voluntary act for the uses and
purposes mentioned in the instrument. 25

Dated this 17th day of October, 2005.

Mary Taylor Notary Public My appointment expires 12/01/07



SHERRI DEWITT, CCR
(206) 617-3415

EXHIBIT

2

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1 UNITED STATES DISTRICT COURT OF THE STATE OF WASHINGTON
2 WESTERN DISTRICT AT SEATTLE

3
4 SHIRLEY M. LACY,)
5 Plaintiff,)
6 vs) NO. CV03-2442-P
7 KAREN VILLENEUVE,)
8 Defendant.)

9
10 DEPOSITION UPON ORAL EXAMINATION OF

11 RICHARD STARTZ, Ph.D.

12 (Volume II)

14 9:00 o'clock a.m.

15 December 8, 2005

16 University of Washington
17 Room 239C, Gerberding Hall
18 Seattle, Washington

19
20
21
22
23
24 SHERRI DEWITT, CCR #29906
25 Court Reporter

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1 Q I read your entry on Exhibit 4, 8-29-2005 for three hours
 2 and 20 minutes to apply to, "Read Gullberg faxes. Look at
 3 Gullberg data. Seat belt stops. Call Triesch." And then
 4 8-30-2005 for one hour 55 minutes to apply to -- excuse
 5 me. That's the one hour and 55 minutes is the, "Read
 6 Gullberg fax" and all that.

7 MR. TRIESCH: Object to the form.

8 BY MR. WING:

9 Q Now, what I want to ask you is do you -- let's make this a
 10 separate question.

11 You've included in that line entry seat belt stops.
 12 Did that idea for investigating statistical data regarding
 13 seat belt stops come from the Gullberg data or the
 14 Gullberg faxes?

15 A I don't remember.

16 Q Did that come from Mr. Triesch?

17 A It may have.

18 Q Did you also consider running statistical analysis
 19 specifically regarding stops for the HOV lane?

20 A I believe that I did; yes.

21 Q And what was your -- did you actually run such
 22 evaluations?

23 A I believe I did some work on that; yes.

24 Q What did you find?

25 A I don't know if it was covered in any of the reports that

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1 the form of discovery during the course of discovery to my
 2 office?
 3 A Probably in two cases; yes. At some point I'm sure that I
 4 said to him, "Different attorneys have different
 5 procedures they like to follow about how much is done
 6 verbally, how much is done in writing and so forth. Do
 7 you have any strong feelings?" And I think his response
 8 was no, that he wasn't concerned.

9 And then in response, well, I guess in response to
 10 your subpoena, at some point I asked him to take a look at
 11 some of my material and ask what parts of this was
 12 responsive and what wasn't and give me sort of the
 13 appropriate guidance since I didn't understand what the
 14 legal issues were. The response was always, "We don't
 15 have anything to hide."

16 Q So I think you testified that you ran some data on the HOV
 17 lane but you no longer have it; is that correct?

18 A No. I said I don't remember. I don't believe -- let
 19 me -- maybe I can help, though.

20 I'm pretty sure that any results which I kept records
 21 of, I'm pretty sure appeared in the reports. I'm trying
 22 to remember if there was also one set of working notes.
 23 But there aren't other files that have been printed out or
 24 anything like that, but I don't remember what's in the
 25 things that have been turned over.

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1 I sent in, but without going back and looking through
 2 those, I don't remember.

3 Q Do you have records of all the statistical runs that you
 4 made?

5 A No.

6 Q What did you do with those runs that you made that you
 7 don't have a copy of?

8 MR. TRIESCH: You can answer the question, but I'm
 9 going to lodge an objection again. I've been giving you
 10 wide latitude on this and you are going, I think, beyond
 11 Judge Robart's order, which was that this deposition is
 12 limited to inquiry about your conversations with defense
 13 counsel.

14 MR. WING: That would be part of this. I understand
 15 your objection.

16 BY MR. WING:

17 Q Go ahead.

18 A These things all appear on a computer screen. If you
 19 don't save them or do something to print them out, they
 20 disappear into whatever electrons go or whatever.

21 Q Did you have a discussion with Mr. Triesch at any point
 22 about what work you would save?

23 A No.

24 Q Did you have a discussion with him at any point about what
 25 data, working notes, you might be required to produce in

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1 Q Do you think somewhere, either on paper or on computer
 2 file, is a copy of all of your data runs that ended up
 3 being in your final report?

4 A No.

5 Q Is there some reason you would not save the data runs that
 6 are actually contained in your final report, the one you
 7 signed?

8 A Yes. The data runs and, of course, now these days, they
 9 are on computer screen, come out in a format where they
 10 show what all the different statistical information is.
 11 And I think it's quite likely that in some cases I copied
 12 and pasted to, appropriate pieces of that into Microsoft
 13 Word, and having done that, I would not, I mean, I might
 14 save an actual copy of the display or I might not.

15 Q Okay. Is it fair to say that any of the statistical runs
 16 that you made that did not appear in any of your
 17 individual reports or opinion letters or final report, you
 18 did not consider to be relevant or add anything to your
 19 analysis of this case?

20 Do you want me to rephrase that?

21 A Thank you.

22 Q Okay. Sure. There are some data runs that you performed
 23 that are not found in any of your written work; is that
 24 correct?

25 A Yes, it is.

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<p style="text-align: right;">Page 219</p> <p>1 Q Okay. For what reason did you not include those data runs 2 in your written work?</p> <p>3 A I didn't include them because I didn't think they 4 contributed anything to understanding of the case or to my 5 opinion. 6 (Exhibit No. 11 marked for identification.)</p> <p>7 Q Now, I'm going to hand you what's marked as Exhibit 11. 8 MR. TRIESCH: Is it a new exhibit? 9 MR. WING: It is.</p> <p>10 Q Have you had an opportunity to look at that? 11 A I haven't read through all of it carefully, but I've 12 quickly scanned it.</p> <p>13 Q Okay. I'll represent to you that the second page, which 14 identifies a privilege log and then a number of documents 15 that are not being produced for that basis, is followed by 16 all the documents that were sent to us by Mr. Triesch 17 accompanying his October 21, 2005 letter, okay.</p> <p>18 A I understand.</p> <p>19 Q Okay. There are some documents in here, if you look at 20 the very last page, which look like your notes?</p> <p>21 A They are.</p> <p>22 Q They are?</p> <p>23 A Yes, they are.</p> <p>24 Q Okay. The last page says near the top, "I was 25 supplied" -- do you see that?</p>	<p style="text-align: right;">Page 221</p> <p>1 Q Please.</p> <p>2 A Sure. This is a note to myself that having looked up 3 somewhere, there wasn't a good data dictionary for this 4 stuff that violation codes were 174 for seat belts and 175 5 for HOV stops. There's the question, there was a 6 question, was Trooper Villeneuve accurately identified in 7 the data. And I think this next note says -- because 8 there are no names of troopers in the data -- that I think 9 that number is for, yeah, that number is for Trooper 10 Villeneuve. And whether -- and that a date, it matches 11 roughly, I guess it's her date of service or something 12 like that. So it probably means it's the right 13 identification.</p> <p>14 So what I did then was I created a new variable called 15 belt stop. There was, I believe, eight possible places to 16 write down a violation, and I was asking if any of them 17 had been for a seat belt stop. Then this is a tabulation 18 and it looks at Trooper Villeneuve's stops and stops by 19 people other than -- the top is stops that are not by 20 Trooper Villeneuve, the next set below is stops that are 21 by Trooper Villeneuve and asks whether they were seat belt 22 stops or not.</p> <p>23 Q And for what geographic area does this cross-tabulation 24 cover?</p> <p>25 A I don't know, but I believe it's APA 5.</p>
<p style="text-align: right;">Page 220</p> <p>1 A I do.</p> <p>2 Q Okay. And then the following sentence -- strike that. It 3 says, "I was supplied (via AG's office) faxes from 4 Sergeant Rod Gullberg as well as a file APA6.sav described 5 as 'Attached is the SPSS data file for APA 6 from January 6 2004 to April 2005"'; do you see that?</p> <p>7 A Yes, I do.</p> <p>8 Q Okay. Does that refresh your recollection at all about 9 the kind of data that you were provided by Sergeant 10 Gullberg?</p> <p>11 A Yes, it does. Thank you.</p> <p>12 Q What can you tell me about this, having read this?</p> <p>13 A That that was an SPSS file and that it contained data. 14 And, again, I do believe, as we discussed earlier, I think 15 it was certainly similar to the Washington State 16 University study. I don't remember the source.</p> <p>17 The work that Professor Guest did that I've also 18 examined for APA 5, which is where the stop was. And my 19 memory is that at some later date that Trooper Villeneuve 20 was working APA 6, and this is data covering a later data 21 period and for APA 6.</p> <p>22 Q What is the significance of the tabulation that is listed 23 on this page?</p> <p>24 A If it's okay, can I just walk through with you the 25 whole --</p>	<p style="text-align: right;">Page 222</p> <p>1 Q Okay. Not APA 6?</p> <p>2 A I don't think so. I'm not -- I'm actually pretty sure 3 that it's not APA 6, but I'm not positive. I can't tell 4 from reading this.</p> <p>5 Q And what does the cross-tabulation on this final page of 6 Exhibit 11 show you?</p> <p>7 A That Trooper Villeneuve, about nine percent of her 8 stops -- I'm sorry. I haven't looked at this table in a 9 long time, since actually roughly 8-30.</p> <p>10 MR. TRIESCH: You mean August 30th for the record 11 and not the time 8:30?</p> <p>12 THE WITNESS: Yes.</p> <p>13 MR. WING: Thank you.</p> <p>14 A Yes. That I think what this is saying is about nine 15 percent of Trooper Villeneuve's stops involved a seat belt 16 stop compared to about 4.8 percent for other troopers. So 17 I think that's what it says.</p> <p>18 Q Why did you run this cross-tabulation?</p> <p>19 A At some point my memory is that Mr. Triesch told me that 20 she was particularly aggressive on seat belt stops, and I 21 looked at this and said, "Well, on the surface that 22 appears to be true."</p> <p>23 Q Why does that matter?</p> <p>24 A Well, that's in the academic sense a good question. Why 25 does that matter? I don't remember whether this was</p>

12 (Pages 219 to 222)

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1 simply telling him that the information was right or
 2 whether it might be thought to have some other bearing on
 3 the case otherwise.

4 Q Did you run a similar cross-tabulation regarding HOV
 5 violations?

6 A Huh. I think I did.

7 Q For what purpose?

8 A One of the questions being asked was whether there are
 9 variables other than race that would do some kind of
 10 accounting for the difference that Professor Guest found
 11 was that different groups might have different behaviors
 12 on any of some large number of dimensions. It might be --
 13 I mean, in this case, different racial groups, I guess,
 14 might be less likely to wear seat belts or they might be
 15 more or less likely to be violating the HOV or any of a
 16 number of things or they might not.

17 Well, what would be relevant is, I suppose
 18 African-Americans since that's the question here, are more
 19 commonly than whites let's say failing to wear seat belts.
 20 I don't know whether that's true or not. There's some
 21 discussion about some of these things in the Washington
 22 State University report, but I don't at the time remember
 23 what they said. And suppose it also happens that
 24 Professor, that Trooper Villeneuve was usually aggressive
 25 about seat belt stops. Then it might be true as a result

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1 of that that essentially just by coincidence she was
 2 stopping more black motorists, and the same would be true
 3 of HOV. So looking at these things were some part of an
 4 exploration of were there other things which gave an
 5 obvious accounting for Professor Guest's early finding.

6 Q Did you test your hypothesis that you just described
 7 regarding any tendency of certain racial groups to
 8 violate, to commit certain violations in conjunction with
 9 Trooper Villeneuve's purported aggressive enforcement of
 10 those violations?

11 A Yeah, I did. And I'll try to remember what they were. I
 12 don't remember without reading through notes or reports
 13 whatever else has been turned over, I don't remember what
 14 the conclusions were.

15 Q Okay. Well, my question is specifically directed to
 16 things that are not in your written reports.

17 A Well, I'm sure that I looked at some things, and I don't
 18 remember what they were, and found, no, they just don't
 19 happen to be any different for different racial groups, or
 20 that they don't account for things.

21 I have a memory that I in fact looked at HOV stops --
 22 and I want to be quite clear, I'm not sure if this is a
 23 correct memory -- and that the principal was true, that
 24 there were, based on the data that I had, racial
 25 differences in HOV violations and that this was something

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1 that Trooper Villeneuve was more aggressive about and that
 2 it accounted in some part, but not very large, for the
 3 findings of Professor Guest.

4 Q Did you discuss that with Mr. Triesch?

5 A Well, as I've said, I'm not entirely confident about
 6 exactly what my memory is, but whatever it was, I did tell
 7 him that, yeah, there were some findings in this direction
 8 but that I didn't think that they were very strong or
 9 relevant.

10 The problem with doing this, and one of my reasons for
 11 conversation with Mr. Triesch is we have what Professor
 12 Guest found. The question is, well, is there something
 13 obvious that explains this? I'm not a State trooper. I
 14 don't get a lot of traffic tickets. I don't really
 15 necessarily know what to look for, and there's an infinite
 16 set of things one can imagine looking for. So it's quite
 17 appropriate to ask people who are involved do they think
 18 there is some obvious thing. And I suspect that either
 19 seat belts or HOV may have come out of some of those
 20 conversations. But I want to be clear, I actually don't
 21 remember. There is some possibility there was mention
 22 something about Gullberg. There's some possibility it was
 23 mentioned in the Washington State report. I don't really
 24 remember the source.

25 Q Do you remember any other suggestions about variables that

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1 you should look at that were made to you by Mr. Triesch?
 2 A Well, there was never anything I think at the quite
 3 specific level of suggesting particular variables, but
 4 there was certainly some discussion about geography, but I
 5 can't tell you whether it arose from Mr. Triesch or from
 6 me simply saying, "Well, are these stops that, if she was
 7 assigned to areas that were, you know, much more heavily
 8 African-American you wouldn't be surprised that there were
 9 more African-American stops. And what do we know about
 10 this?"

11 And I think I can fairly say that I actually think
 12 that -- I have very limited information about racial
 13 compositions of areas, and I have very limited information
 14 really about where Trooper Villeneuve was assigned. So
 15 there's some work that I did based on mile posts where
 16 stops were, which I'm sure is included in some of the
 17 reports. From a scientific point of view, it would be
 18 nice to have better information, but this was all that was
 19 available.

20 Q Did you include in your final report all data runs and
 21 conclusions that you thought were important?

22 A Yes. Yes. Well, let me say, important to explain my
 23 opinion and my findings. I mean, as an example, I did
 24 rerun a number of the things that Professor Guest did, and
 25 exactly as I expected, I got the same numbers he did. I

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1 don't think I included things like that.
 2 Q Okay. Did you do any calculations of Trooper Villeneuve's
 3 time in APA 6 to determine whether there were relevant or
 4 important cross-tabulations?
 5 A I did, I have a memory I did something, I don't remember
 6 what it was exactly. Well, let me be careful. I'm not
 7 sure whether it was -- I'm sure I did something on APA 6
 8 and probably at some point said to the Attorney General,
 9 "This is something if you would like me to spend the time
 10 I can pursue more. The question you need to think about
 11 is do you think this is relevant to the case." Because my
 12 understanding was that her assignments in APA 6 were
 13 later, and there would be some argument about whether that
 14 was relevant evidence or not. And I think that's about as
 15 far as it went.
 16 Q What did Mr. Triesch tell you when you asked him, "Do you
 17 want me to do this and would it be relevant?"
 18 A I'm not sure. I think he probably said, "Let me think
 19 about it", or something like that. Let me be clear that I
 20 did not find anything which I thought was damaging to
 21 Trooper Villeneuve's case in looking at that. So if I
 22 had, I would have pushed much harder and said, "Well, you
 23 know, this is not appropriate to hide" or whatever the
 24 term is. It's stuff which to me looked to be helpful to
 25 her case, but perhaps not really very relevant. And I

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1 A That if you -- once you account for where the stops took
 2 place, then there's not a statistically significant
 3 difference according to, I think, the officer there, I
 4 assume that refers to, whether it's Trooper Villeneuve or
 5 not.
 6 Q Okay. I'm not sure, could you just say that again? I may
 7 have misunderstood you, but --
 8 A I'll try.
 9 Q Okay.
 10 A I think what that says is that once you take account of
 11 the mileage post at which the stop took place for those
 12 for which we have that information, then there's not a
 13 statistically significant difference in the number of
 14 stops or percentage of stops by race for Trooper
 15 Villeneuve versus others. I think that's what it says.
 16 Q At the bottom of that page it lists violation codes for
 17 seat belt, HOV violation, DUI and speeds; do you see that?
 18 A I do.
 19 Q Do you believe that you ran cross-tabulations regarding
 20 each of those violations?
 21 A No, I don't.
 22 Q Do you know why they are listed there?
 23 A Because I was rummaging through the database and trying to
 24 figure out what the codes meant, and when I figured
 25 something out, I want to write it down before I forgot it.

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1 figure that that's in some sense a judgment as to how much
 2 work they want done in that area.
 3 Q Do you remember finding anything that you thought was
 4 helpful to Trooper Villeneuve's case in APA 6?
 5 A Well, I have a general memory that some of the racial
 6 differences weren't as great, but I don't have any very
 7 specific memory. And I don't know exactly what that's
 8 based on because I don't think the racial composition of
 9 APA 6 is the same as APA 5. And, of course, composition
 10 is a problem because these are where people are driving
 11 and not necessarily where people -- it's not -- I don't
 12 know how much data there is on where people drive as
 13 opposed to where they live.
 14 Q These pages aren't numbered, so if you'll follow on along
 15 we'll move from the back forward.
 16 A Okay.
 17 Q I think it's the fourth page from the back. It starts at
 18 the top, "Notes 2 on Lacy v Villeneuve - Stream of
 19 consciousness, not verified", do you see that?
 20 A Yes, I do.
 21 Q Okay. You wrote in paragraph 1, "It looks like officer is
 22 not significant if you also account for mileage post"; is
 23 that what you wrote?
 24 A Yes, it is.
 25 Q What did you mean by that?

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1 Q For what purpose were you rummaging around looking for
 2 what these codes meant?
 3 A Oh, for the potential question was was there some of these
 4 that would account for racial differences.
 5 Q And once you found what the codes meant, how did you
 6 intend to use those codes to do just what you said, which
 7 was, see if they account for the racial differences?
 8 A Well, I didn't have the intention, I was just trying to
 9 write down things as I happened to notice them that I
 10 thought might be useful later.
 11 Q Was there some reason why you did not run
 12 cross-tabulations regarding seat belt, HOV, DUI and speed?
 13 A I didn't say that I didn't. I think we see at least some
 14 cross-tabulation later on for one of them, for belt stops.
 15 I think I ran some, and frankly, the form of the database
 16 was painful to work with to try to -- because they were
 17 coded in a bunch of different places and I wasn't 100
 18 percent sure I understood all of them, it was going to
 19 take a lot of work to try out all of the different
 20 possible things, and at some point I made the cost benefit
 21 judgment that it wasn't worth looking at all the
 22 possibilities. You always have to make that judgment some
 23 place. I'm just saying that in this case it came about
 24 here.
 25 Q Were you told at any point by Mr. Triesch or someone from

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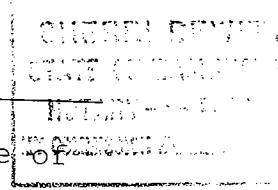
<p style="text-align: right;">Page 271</p> <p>1 came from Gullberg as we discussed, further data either 2 from a different place or a different time or something, 3 and maybe that's not being responsive.</p> <p>4 It got in the report because I thought it was 5 appropriate to put that in there because there might be 6 further work that could be done.</p> <p>7 Q Was that suggested to you by the Attorney General's 8 Office?</p> <p>9 A No.</p> <p>10 Q And paragraph 5, the very final sentence reads, "I was 11 also supplied copies of two studies of the Washington 12 State Patrol" -- thank you -- "done by researchers at 13 Washington State University"; is that correct?</p> <p>14 A Yes, that's correct.</p> <p>15 Q Who provided those to you?</p> <p>16 A I think they both came from the Attorney General's Office.</p> <p>17 Q Okay. And they were not in your previous reports; is that 18 correct? That sentence or a reflection that you reviewed 19 those documents?</p> <p>20 A I don't know. I wouldn't normally tell the, report to the 21 Attorney General what they sent me; I figure that they 22 know.</p> <p>23 Q Okay. Did they suggest that you add that?</p> <p>24 A No.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">Page 273</p> <p>1 A That's correct.</p> <p>2 Q How did you decide not to do that type of exploration or 3 investigation?</p> <p>4 A That's not quite what I testified to --</p> <p>5 Q Okay.</p> <p>6 A -- but --</p> <p>7 Q Let me rephrase that. Did you do any investigation or 8 exploration into the search or arrest behavior of Trooper 9 Villeneuve?</p> <p>10 A Yes, I did some very small amount. Professor Guest had 11 discussed some of that in his, I think it's in his report.</p> <p>12 And I took some quick looks to say, "Oh, okay. What he's 13 saying there seems to be basically in contrast to what he 14 actually does say; is that said correct?" And yeah, as 15 one would expect. In fact, interestingly, we were using 16 different software and it seemed to be exactly the same 17 numbers.</p> <p>18 And there was some discussion with Mr. Triesch where 19 he said that the legal basis for issues having to do with 20 search and arrest were different, and I can't explain what 21 those were. And, therefore, my understanding of this, 22 which may be flawed, but my understanding is these were 23 somewhat lesser issues in the case.</p> <p>24 Q Did you investigate all of the primary variables that you 25 thought should be considered?</p>
<p style="text-align: right;">Page 272</p> <p>1 A They -- no, actually. No, they didn't. I mean, it's -- I 2 try to remember to write in all of the, clearly, the 3 relevant things in some sense whenever I want to make sure 4 Pete would know about. That's all that's in there.</p> <p>5 Q Now you did not list in your final report all of the 6 documents that you reviewed before preparing your final 7 report; is that correct?</p> <p>8 A That's correct.</p> <p>9 Q And for what reason did you not include everything you 10 reviewed?</p> <p>11 A I was just trying to include those things that were most 12 important for understanding what I'd written in the 13 report.</p> <p>14 Q Do you still have copies of the Gullberg faxes and 15 Gullberg data?</p> <p>16 A Probably.</p> <p>17 Q Did you have a discussion with Mr. Triesch or anyone from 18 his office about whether to investigate Professor Guest's 19 opinions about search and arrest practices of Trooper 20 Villeneuve?</p> <p>21 A Not that I recall.</p> <p>22 Q How did you decide not to -- strike that.</p> <p>23 Is it correct to say that none of your reports or 24 opinions contain any research or cross-tabulations about 25 search and arrests?</p>	<p style="text-align: right;">Page 274</p> <p>1 A I'm not sure what you mean by "primary variables".</p> <p>2 Q Well --</p> <p>3 A Do you want to ask all the variables?</p> <p>4 Q No, because I think you've already testified --</p> <p>5 A Okay.</p> <p>6 Q -- that there are an infinite number of variable.</p> <p>7 A Yes.</p> <p>8 Q Would you agree with me that in any statistical 9 investigation you must make a judgment call as to which 10 ones to start with and which ones to leave aside?</p> <p>11 A Absolutely.</p> <p>12 Q And in your judgment did you investigate all the variables 13 that you thought were most obvious?</p> <p>14 A No. I investigated the ones that I thought were most 15 obvious and which I had readily available data on. So, in 16 the best of all possible worlds, I can imagine somebody 17 going out and gathering all sorts of other data, but that 18 wasn't -- I don't mean me going out and gathering it, but 19 somebody could, and that wasn't realistic.</p> <p>20 MR. WING: Could I just ask you to read back the 21 first part of that? I don't want to ask any more 22 questions if I've got the answer.</p> <p>23 (Requested portion was read back.)</p> <p>24 MR. WING: Okay. Thank you.</p> <p>25 Q Let me just look at my notes and I think we're about done</p>

25 (Pages 271 to 274)

1 C E R T I F I C A T E

2 STATE OF WASHINGTON)

3 COUNTY OF KING)

4 I, SHERRI DEWITT, Notary Public in and for the
5 State of Washington do hereby certify;6 The foregoing deposition was taken before me at the
7 time and place set forth;8 The witness was by me first duly sworn to testify the
9 truth; and the testimony of the witness and all objections
10 made at the time of the examination were recorded
11 stenographically by me, and thereafter transcribed by
12 myself;13 The foregoing transcript is a true record of the
14 testimony of the witness and of all objections made at the
15 time of the examination, to the best of my ability. I
16 further certify that I am in no way related to the parties
17 or counsel in the action, nor do I have an interest in the
18 matter;19 WITNESS my hand and Seal this 16th day of December,
20 2005.21 
22 NOTARY PUBLIC in and for the State of 23 Washington, at North Bend. My Commission
24 expires 5/26/06.

EXHIBIT

3

Avery Mason Guest, PhD

Page 1

DEPOSITION UPON ORAL EXAMINATION OF

avery mason guest, PhD

9:00 a.m.

September 8, 2005

900 Fourth Avenue - Suite 2000

Seattle, Washington

Avery Mason Guest, PhD

<p>1 the 40 states APAs, similarly Native Americans are more 2 likely to be issued citations than white drivers in 31 APAs 3 presumably of 40.</p> <p>4 Likewise a higher proportion of Asian drivers 5 compared to white drivers are likely to be issued citations 6 in 29 APAs presumably of 40.</p> <p>7 Finally, a higher proportion of Hispanic drivers are 8 issued citations in 39 APAs. And then the way I read the 9 report it minimizes the importance of this but my concern 10 here is that it suggests a general pattern across the 11 majority of APAs of differential treatment of ethnic 12 minorities.</p> <p>13 Q Is there some incorrectness to that?</p> <p>14 A Well I believe there is an incorrect interpretation of the 15 data. I don't challenge the findings about the number of 16 APAs where ethnic minorities are overrepresented. I would 17 actually have to do a more detailed inspection of the data 18 to ascertain that.</p> <p>19 What my note is doing is expressing concern about 20 the interpretation or the conclusion that's drawn from the 21 data as presented in the report.</p> <p>22 Q Why are you concerned about the conclusion again?</p> <p>23 A I'm interested in an accurate presentation of the data. As 24 a social scientist I believe we have an obligation to 25 accurately interpret our data and it seems to me that an</p>	<p>Page 26</p> <p>1 of whether a citation is issued has a complicated 2 relationship with the number of violations and the 3 seriousness of the violations.</p> <p>4 So I would be reluctant to interpret the effects of 5 ethnicity controlling for a number of violations and 6 controlling for seriousness of violations because it seems 7 to me that here the researchers have possibly confused what 8 I would call the independent variables and the dependent 9 variables.</p> <p>10 So what they want to do is they want to interpret 11 the effects of race on whether a citation is issued 12 controlling for the number of violations and the seriousness 13 of the violation, but I would say that there is kind of 14 circular relationship between the number of violations, 15 seriousness of violation and whether a violation is issued. 16 So I would be reluctant to call number of violations and 17 seriousness of violations an independent or causal variable 18 here.</p> <p>19 Q Is there a correct way to do it or is that a matter of a 20 social scientist's interpretation of what should be the 21 independent or the dependent variable?</p> <p>22 A I believe that there is a much better way of doing it, yes.</p> <p>23 Q And that's the way you just identified?</p> <p>24 A I haven't identified the alternative.</p> <p>25 Q But you're saying this choice of I guess the dependent</p>
<p>Page 27</p> <p>1 intuitive interpretation of the data, regardless whether 2 you're a social scientist, would be that in most of the APA 3 districts there is an overrepresentation of ethnic 4 minorities who are contacted by the state troopers.</p> <p>5 Q Is that contrary to the actual findings and interpretations 6 of the report, that intuitive interpretation that you just 7 gave?</p> <p>8 A I believe that it is opposite to the general way that the 9 report is written, yes.</p> <p>10 Q Anything else on page 62 that you took issue with?</p> <p>11 A No.</p> <p>12 Q What's the next page that bears a post-it note and why did 13 you place a note on that page?</p> <p>14 A Yes, this is page 70, and this is a logistic regression 15 which is similar to the technique that I used in my report, 16 and the dependent variable, or the variable to explain here 17 is whether a citation was issued to the person who was 18 stopped.</p> <p>19 And my concern here is that the independent 20 variables include the number of violations that the trooper 21 noted, and the seriousness of the violations, and then also 22 includes variables for what I would call social and 23 demographic characteristics of the stops such as -- well 24 actually their gender, age and ethnic identification.</p> <p>25 And my concern is that it seems to me the question</p>	<p>Page 29</p> <p>1 variable is incorrect?</p> <p>2 A Yes, I would say that it doesn't meet normal social science 3 standards, yes.</p> <p>4 Q What's the next page you have a post-it note on and why?</p> <p>5 A Okay, this is page 93 and my comment on the tab is what is a 6 non-discretionary search and this is a page that analyzes 7 the relationship of ethnicity to searches by whether they 8 are discretionary or not.</p> <p>9 I use the terms of the report and my question is 10 what is a non-discretionary search and I'm not -- I'm still 11 not clear what is a non-discretionary search so I have 12 trouble interpreting the data because I don't understand 13 what the variable is.</p> <p>14 Q With the exception of the seven pages where you found 15 interpretations or data or both with which you took issue do 16 you have any concern about any other aspects of the WSU 17 traffic stop data analysis project dated June 1, 2003?</p> <p>18 A I can't answer that question with a simple yes or no, I'm 19 not an expert enough at this point on the whole report to 20 make an expert judgment about the overall report.</p> <p>21 Q With the exception of the seven pages where you found 22 specific concerns do you agree with the general protocols 23 used by the researchers in creating that study?</p> <p>24 MR. WING: Objection, asked and answered. Go 25 ahead.</p>

8 (Pages 26 to 29)

Avery Mason Guest, PhD

<p style="text-align: right;">Page 82</p> <p>1 And then, let's see, then I recoded the age of the 2 subject, the age of the subject was described in single 3 years and I grouped them into major age groups which 4 correspond to life cycle stages of people.</p> <p>5 Q Why?</p> <p>6 A Because I thought that the troopers possibly could treat 7 people by race differently in different age groups. As an 8 example you could think that people in their early 20s might 9 just generally be what I would call wild and crazy and that 10 troopers would not make any distinction on the basis of race 11 because in effect their behavior would be really just 12 generally outrageous or prankster-ish, so I thought there 13 might not be a big difference by age and race among or by 14 race among young adults or young drivers.</p> <p>15 On the other hand you might think that among middle 16 aged, what I would call middle-aged people, which I would 17 describe personally as 35 to 54, that behavior would be 18 generally more law abiding and that there would be a greater 19 possibility of finding racial differentials.</p> <p>20 In other words it would be easier to make 21 distinctions on the basis of race and stopping, arresting 22 and searching people so I split them up by major age groups 23 and in my report I do have one table which refers to people 24 35 to 54, which I would call from my 64 year old perspective 25 I would call middle-aged.</p>	<p style="text-align: right;">Page 84</p> <p>1 (Exhibit No. 5 marked)</p> <p>2 Q Dr. Guest, I've made Exhibit No. 5, which is your report, a 3 part of your deposition, and I'm going to ask some questions 4 about it, so you can testify from the report or any part of 5 the file you wish in answering my questions.</p> <p>6 First of all does Exhibit No. 5, which is a copy of 7 your report, reflect all of the work you've done on this 8 case?</p> <p>9 A No.</p> <p>10 Q What is not reflected?</p> <p>11 A I did some tabulations of the data which are not reported 12 here.</p> <p>13 Q What tabulations did you do?</p> <p>14 A I can't remember each and every tabulation that I did but I 15 will try honestly to summarize the other types of 16 tabulations that I did. So I told you a bit about the DUI 17 issue. I did some tabulations looking at the relationship 18 between race and driving under the influence.</p> <p>19 I also did tabulations on the search variable, 20 whether contraband was found or not found before I recoded 21 it and used the recoded version in my report.</p> <p>22 Q What did you do with that data and why?</p> <p>23 MR. WING: Asked and answered.</p> <p>24 MR. TRIESCH: I'll restate it.</p> <p>25 Q What did you do with that tabulation and why?</p>
<p style="text-align: right;">Page 83</p> <p>1 Race, race I recoded into three groups, white, black 2 and other racial groups and the primary reason for that was 3 that there were often small numbers of people in the 4 specific other categories and it was hard to make much sense 5 of the data.</p> <p>6 And then the search variable I recoded the search 7 variable into whether there was a search done or not. Right 8 now, it's in three categories, so there is no search, search 9 done with no contraband found and search done with 10 contraband found and I felt that it was difficult to tell 11 the causal relationship between contraband and having a 12 search done, and so I just combined together the S and C 13 codes which are whether contraband was found or not.</p> <p>14 I believe those were the major recodes that I made 15 in the data.</p> <p>16 Q You said major, I'm asking you to tell me if you created any 17 variables and you've listed four, you call them recodes, to 18 me that's as good as created.</p> <p>19 A I would agree.</p> <p>20 Q Are there any others besides the four that you've informed 21 me about?</p> <p>22 A I did some work with DUI data which is contained in the UCR 23 arrest code and I did some recoding of that but I abandoned 24 it for reasons which I've described earlier and I can't 25 honestly remember exactly how I recoded those data on DUI.</p>	<p style="text-align: right;">Page 85</p> <p>1 A I ran it on my computer but I didn't save it, I don't have 2 the tabulation.</p> <p>3 Q Was there anything about that that you can recall about what 4 was revealed in the computer result?</p> <p>5 A No, there really isn't. I can't tell you anything 6 specifically about that. I was bothered by the causal 7 relationship and whatever the pattern was I worry about 8 that, led me to abandon that, but I can't recall what the 9 finding was.</p> <p>10 Q So what other work did you do that's not reflected in your 11 report?</p> <p>12 A I also did some work on the type of contact looking at 13 relationship of officer, race and the type of contact that 14 was made, what's called contact variable here. And then I 15 ran most of the tabulations that are reported in my report 16 for the state, or I think I ran virtually all of them for 17 the state also just to make sure that I wasn't just looking 18 at a pattern that was unique to APA 5.</p> <p>19 Q I missed what you were just referring to, is this the fourth 20 category of tabulation? I mean let me stop you for a 21 minute, please.</p> <p>22 A Sure.</p> <p>23 Q I don't want to be confused and get off track here. I 24 understand you ran a tabulation dealing with race and DUI 25 and you abandoned that?</p>

22 (Pages 82 to 85)

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Avery Mason Guest, PhD

	Page 86		Page 88
1 A	That's right.	1	of any kind that you did that did not wind up in your report?
2 Q	And I understand that you ran a tabulation regarding search if contraband is found or not found and you also abandoned that?	3 A	There is one other. I did many of the tabulations both for APA 5 and for the state using all of the racial categories, but as I explained earlier to you it was often difficult to make much sense of them because the numbers of members of specific ethnic groups, except for blacks, and possibly Asians, turned out to be quite small.
5 A	Yes.	9 Q	Does that exhaust the tabulations, assessments and analyses that you did in your work on this case that did not wind up in your report, those five areas?
6 Q	Then I understand that you ran a tabulation regarding the type of contact?	12 A	To the best of my knowledge, yes.
8 A	That's correct.	13 Q	Did you use any variables that are not included in your report or is that part of your prior answer?
9 Q	What is it that you did with reference to the type of contact?	15 A	That was part of my prior answer.
11 A	I looked at racial differences among officers and how contact occurred, what was the nature of the contact between officers, race and the specific type of contact.	16 Q	And again you have no knowledge of Trooper Villeneuve's specific behaviors regarding this stop of Shirley Lacy except as reflected in a citation provided to you by Mr. Wing, is that correct?
14 Q	What did you do with the results of that tabulation?	20 A	Yes, that's correct.
15 A	I also abandoned those.	21	MR. WING: Objection, asked and answered.
16 Q	Why?	22 Q	And you did not participate in the quality control protocols in the collection of this data from WSU, correct?
17 A	I was bothered by the fact that some of these categories are quite vague and almost 90 percent of the contacts are described as self-initiated contacts by the officer, and I kind of have a sense of what that would be.	24 A	That is correct.
21	For instance I'm sure that speeding would be a self-initiated contact by the officer but I also had trouble figuring out what are other categories of self-initiated contact. But to try to summarize briefly my concern there, since about 90 percent of the cases were in one category I	25 Q	Do you know if this is, and I may have already asked this
	Page 87		Page 89
1	didn't feel that I was going to get a lot out of analyzing all of these categories together.	1	and just confused, but is this all of the data that WSU had regarding traffic stops by Washington state patrol troopers?
3	Another problem I had with the contact data was that there were often very small numbers of cases for both Officer Villeneuve and other officers in APA 5, and so it was hard in honesty to make much interpretation of the data.	3 A	I don't know.
7 Q	Okay, and then the fourth tabulation that you did that is not part of your report you were describing when I interrupted and I didn't understand what it was.	4 Q	Is this all the data that the state patrol had?
10 A	Every tabulation that is in my report was also done for the whole state. So as an example rather than simply compare Officer Villeneuve, Trooper Villeneuve with the other officers in APA 5 I compared her with all of the other officers in the state.	5 A	I don't know that either.
15 Q	But you did not include those in your report?	6 Q	Did you ever inquire of WSU whether they had other data?
16 A	I included one in my report. Would you like to know which one that is?	7 A	No.
18 Q	I already know which one it is, why did you include it in the report?	8 Q	Did you ever inquire of the Washington State Patrol if it had other data?
20 A	One of the patterns that I found was only marginally statistically significant and even though there is a fairly important difference there and so I wanted to replicate it for the state and see what would happen with the state. In the case of the state it is statistically significant.	10 A	No.
25 Q	Were there any other tabulations or assessments or analyses	11	MR. TRIESCH: Off the record.
		12	(Noon recess taken)
		13	MR. TRIESCH: Back on the record.
		14 Q	Dr. Guest, when we concluded for the lunch break we were talking about whether or not you knew if WSU had more data or the state patrol had more data than you received and I think you indicated you do not know whether they do, correct?
		19 A	That's correct.
		20 Q	If a wider range of data were available to you would it affect how much you rely on the data provided to you by Mr. Wing?
		23	MR. WING: Objection, vague.
		24 A	I considered the data provided me by Mr. Wing to be quite adequate.

EXHIBIT

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1 HON. JAMES L. ROBART
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 SHIRLEY LACY,

14 Plaintiff,

15 vs.

16 K. L. VILLANEUVE,

17 Defendant.

18 NO. CV 03-2442 JLR

19 DECLARATION OF SERVICE

20 I, Jesse Wing, hereby declare as follows:

21 I am counsel for plaintiff and have personal knowledge of the facts herein. On this date

22 I had hand delivered a true and correct copy of the below listed documents to:

23 Paul J. Triesch, WSBA 17445

24 Timothy E. Steen, WSBA 35560

25 Shannon E. Inglis, WSBA 23164

Assistant Attorney Generals

Attorney General of Washington

Tort Claims Division

Mail Stop TB 14

900 4th Ave, #2200

Seattle, WA 98164-1012

Attorneys for Defendant

26 DECLARATION OF SERVICE - 1

27 MACDONALD HOAGUE & BAYLESS

28 1500 HOGE BUILDING

29 705 SECOND AVENUE

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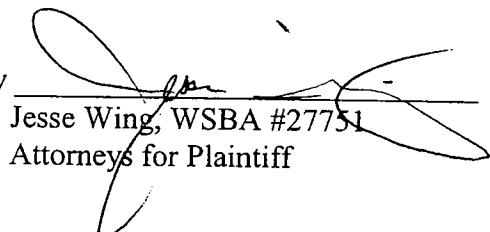
FAX: (206) 343-3961

33

1. Plaintiff's Second Supplemental Answers and Responses to Defendant's First
2. Plaintiff's Disclosure of Expert Witnesses
3. Report of Expert Witness Anthony J. McElroy
4. Supplemental Expert Report of Anthony McElroy
5. Expert Report of Avery Mason Guest, Ph.D.
6. Supplemental Expert Report of Avery Mason Guest, Ph.D.
7. Declaration of Service

9 DATED this 14th day of July, 2005.

10 MacDONALD HOAGUE & BAYLESS

12
13 By 
14 Jesse Wing, WSBA #27751
15 Attorneys for Plaintiff

25 DECLARATION OF SERVICE - 2

34
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1 HON. JAMES L. ROBART
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8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE
10

11 SHIRLEY LACY,
12

13 Plaintiff,

14 No. CV03-2442JLR
15

16 v.
17

18 K. L. VILLANEUVE,
19

20 Defendant.
21

22 SUPPLEMENTAL EXPERT REPORT OF
23 AVERY MASON GUEST, Ph.D.
24

25 1. Attached on CD ROM is the data on which I based my Report, documents I
16 cited in my Report, and a copy of my *curriculum vitae* listing the publications that I have
17 authored during the past ten years.
18

19 2. Plaintiffs have agreed to pay me \$50 per hour for any work I perform related
20 to this matter.
21

22 3. I have not testified as an expert at trial or by deposition within the past four
23 years.
24

25 //

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1 DATED this 13th day of July, 2005, at King County,
2 Washington.
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5 Avery Mason Guest, Ph.D.
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